



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 3/23/2021

ORM Number: NWS-2021-234

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: WA City: Mount Vernon County/Parish/Borough: Skagit

Center Coordinates of Review Area: Latitude 48.453918° Longitude -122.431342°

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland 1	2.98	acre(s)	(b)(1) Non-adjacent wetland.	The wetland does not abut an (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water by a natural berm, bank, dune, or similar natural feature or by an artificial dike, barrier, or similar artificial structure that allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See Section III.C for additional details
Ditch E	1,100	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The ditch is not a relocated a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland. See Section III.C for additional details

**III. SUPPORTING INFORMATION**

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [“Spire BESS Wetland Delineation Report,” dated 17 February 2021](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).

Photographs: [Aerial: Google Earth 15 August 2020](#)

Corps site visit(s) conducted on: [Date\(s\)](#).

Previous Jurisdictional Determinations (AJDs or PJDs): [NWS-2016-683 , 27 June 2017 \(adjacent parcel\)](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: Natural Resources Conservation Service (NRCS). 2020. Web Soil Survey. United States Department of Agriculture. <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

USFWS NWI maps: [U.S. Fish and Wildlife Service \(USFWS\). 2021. National Wetlands Inventory. “Wetlands Mapper.”https://www.fws.gov/wetlands/data/mapper.html.](#)

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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USGS topographic maps: [La Conner 7.5 Quad 1973](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	N/A.
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	N/A.
<a href="#">State/Local/Tribal Sources</a>	N/A.
<a href="#">Other Sources</a>	N/A.

**B. Typical year assessment(s):** [N/A](#)

**C. Additional comments to support AJD:** The JD request involves two separate review areas. The subject properties are located in the Indian Slough/Padilla Bay watershed north of SR 20 between Mount Vernon and Anacortes, Skagit County, Washington. The review areas are surrounded by industrial developments.

Review area 1 - is an irregular polygon of approximately 22 acres and includes the Freedonia Road corridor. Properties adjacent to the review area include a maintained utility corridor and forested area to the north, undeveloped fields and forested areas to the west, a stormwater pond to the south, and a cleared and graded area to the east. The review area slopes down from north to south and is predominately grassy fields. A number of ditches occur in the immediate vicinity as identified for a previous jurisdictional determination (NWS-2016-683). The ditches appear to have been originally constructed in uplands for agricultural drainage. They now serve to convey stormwater flow from the surrounding developments. There are two existing drainages ditches immediately west and south of the review area.

A delineation conducted in December of 2020 identified one 2.98 acre PEM Category IV wetland (Wetland 1) in the review area. The southern edge of wetland is approximately 160 feet away from a stormwater pond to the south and approximately 210 feet away from a ditch to the west. There are no natural berms, banks, dunes, or similar natural feature between the wetland and the ditches and pond and no artificial dike, barrier, or similar artificial structure between them. The stormwater pond is not included in the Review Area of this AJD. The stormwater pond discharges into a ditch along its southern edge which flows into a long (1,000+ feet) culvert under the Sierra-Pacific wood mill, then into Indian Slough, which flows 2.85 miles west before entering Padilla Bay. The ditch to the west conveys ephemeral flows south, then east and into the same long culvert described above.

Review area 2 – is a narrow rectangular area of approximately 3.4 acre running from Overall Road southward between to industrial sites and extending to the utility corridor mentioned above. The area is predominantly forested and contains a large ditch (Ditch E) that runs south along the western edge, then west long the southern edge of the Vorobik Plant site, then south along Ball Road before turning east and flowing into the large culvert described above. The ditch is approximately 1,200 feet long (in review area) and conveys intermittent flow based on information from a previous JD (NWS-2016-683). However, based on review of historic topographic maps, NWI maps, and soil surveys, the ditch is not a relocated a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland.